



WASHOE COUNTY

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STAFF REPORT
BOARD MEETING DATE: December 8, 2015

DATE: October 20, 2015
TO: Board of County Commissioners
FROM: Amber Howell, Director of Social Services
(775) 785-8600 ahowell@washoecounty.us
THROUGH: Kevin Schiller, Assistant County Manager
SUBJECT: **Approve an Interlocal Contract Between Public Agencies between the State of Nevada Department of Health and Human Services Health Care Financing and Policy and Welfare and Supportive Services Divisions and Washoe County to maintain the County Match Program, under Title XIX of the Social Security Act, assistance to individuals in long term care facilities retroactive to July 1, 2015 until June 30, 2017 for a projected amount of \$5,000,000 per fiscal year. (All Commission Districts)**

SUMMARY

The Department is recommending the Board approve the Interlocal Contract Between Public Agencies between the State of Nevada Department of Health and Human Services Health Care Financing and Policy and Welfare and Supportive Services Divisions and Washoe County to maintain the County Match Program providing assistance to individuals in long term care facilities.

Strategic Objective supported by this item: Safe, Secure and Healthy Communities.

PREVIOUS ACTION

On December 17, 2013, the Board approved an Interlocal Contract Between Public Agencies between the State of Nevada Department of Health and Human Services Health Care Financing and Policy and Welfare and Supportive Services Divisions and Washoe County to maintain the County Match Program, under Title XIX of the Social Security Act, assistance to individuals in long term care facilities retroactive to July 1, 2013 until June 30, 2015 for a projected amount of \$5,000,000 per fiscal year.

On October 11, 2011, the Board approved the Interlocal Agreement between the Department of Health and Human Services Division of Welfare and Supportive Services and Division of Health Care Financing and Policy and Washoe County Department of Social Services to maintain the County Match Program, under Title XIX of the Social

AGENDA ITEM # 12

Security Act, assistance to individuals in long term care facilities retroactive from July 1, 2011 until June 30, 2013.

The Board has approved agreements with the State since 1989.

BACKGROUND

The County Match Program is a Medicaid Program that allows States to draw down Federal Matching dollars through a Federal Medical Assistance Percentages (FMAP) formula to cover nursing home clients whose income is between 138% and 300% of the Social Security Supplemental Income (SSI). Each year this percentage is changed; the FMAP rate is currently 64.36% and it will increase to 64.93% effective October 1, 2015. Washoe County is responsible for the non-Federal or State Share of the program.

The initial Interlocal Agreement for the County Match Program provided medical assistance to individuals in long-term care facilities whose monthly income was more than \$714 per month but no more than 300 percent of the Supplemental Security Income (\$1,452 effective January 1997).

In its inception, the County responsibility was for clients with incomes between 155% and 300% of SSI. The initial concept called for the State to increase its participation to 300%, however the State has never increase their responsibility beyond 156%. The rate prior to the 2011 session was 156% and during the 2011 session, due to the State budget deficit, the rate was moved down to 142%, thus increasing the County's responsibility. In addition to the increase in responsibility, the State also included clients who met eligibility through the waiver program. The proposed contract maintains the rate at 142% of SSI and continues to include waiver clients.

Under the American Reinvestment and Responsibility Act (ARRA) and the Patient Protection and Affordable Care Act (PPACA), States are prohibited from increasing a political subdivision's percentage of the non-federal share they voluntarily pay under Medicaid programs. NRS 422.272 defines the States responsibility for the non-federal share in nursing home expenditures. That provision allows the Director of the Department of Health and Human Services to set the State's responsibility. It does not, however, define the counties responsibility for nursing home expenditures.

Under NRS 428.010, the counties are responsible for the care, support and relief to the poor, indigent, incompetent and those incapacitated by age, disease or accident which would include nursing home care for indigent individuals. The County Match program allows Federal matching funds to be used for this care.

FISCAL IMPACT

Should the board approve this interlocal contract, the Department's FY16 adopted budget includes funding to support the anticipated \$5 million expenditure level in internal order 60333, with funding from indigent funding sources including the general fund and levy fund.

RECOMMENDATION

Recommendation to approve an Interlocal Contract Between Public Agencies between the State of Nevada Department of Health and Human Services Health Care Financing and Policy and Welfare and Supportive Services Divisions and Washoe County to maintain the County Match Program, under Title XIX of the Social Security Act, assistance to individuals in long term care facilities retroactive to July 1, 2015 until June 30, 2017 for a projected amount of \$5,000,000 per fiscal year.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be: "move to approve an Interlocal Contract Between Public Agencies between the State of Nevada Department of Health and Human Services Health Care Financing and Policy and Welfare and Supportive Services Divisions and Washoe County to maintain the County Match Program, under Title XIX of the Social Security Act, assistance to individuals in long term care facilities retroactive to July 1, 2015 until June 30, 2017 for a projected amount of \$5,000,000 per fiscal year".

INTERLOCAL CONTRACT BETWEEN PUBLIC AGENCIES

A Contract Between the State of Nevada
Acting By and Through Its

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Division of Health Care Financing and Policy (DHCFP)
1100 East William Street
Carson City, Nevada 89701
(775) 684-3636

And

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Division of Welfare and Supportive Services (DWSS)
1470 College Parkway
Carson City, Nevada 89706
(775) 684-0650

And

WASHOE COUNTY
PO Box 11130
Reno, Nevada 89520
(775) 328-2769

WHEREAS, NRS 277.180 authorizes any one or more public agencies to contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform; and

WHEREAS, it is deemed that the services of Washoe County (the County), and the Division of Welfare and Supportive Services (DWSS) hereinafter set forth are both necessary to the Division of Health Care Financing and Policy (DHCFP) and in the best interests of the State of Nevada;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** This Contract shall not become effective until and unless approved by appropriate official action of the governing body of each party.
2. **DEFINITIONS.** "State" means the State of Nevada and any state agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
3. **CONTRACT TERM.** This Contract shall be effective retroactively from July 1, 2015 to June 30, 2017, unless sooner terminated by either party as set forth in this Contract.
4. **TERMINATION.** This Contract may be terminated by either party prior to the date set forth in paragraph (3), provided that a termination shall not be effective until 90 days after a party has served written notice upon the other party. This Contract may be terminated by mutual consent of both parties or unilaterally by

either party without cause. The parties expressly agree that this Contract shall be terminated immediately if for any reason federal and/or State Legislature funding ability to satisfy this Contract is withdrawn, limited, or impaired.

5. NOTICE. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth above.

6. INCORPORATED DOCUMENTS. The parties agree that the services to be performed shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence:

ATTACHMENT A: SCOPE OF WORK

7. CONSIDERATION. The County agrees to pay the DHCFFP for the services set forth in paragraph (6) at a cost not to exceed \$0.00 (zero dollars and zero cents) each year for the contract term. Any intervening end to a biennial appropriation period shall be deemed an automatic renewal (not changing the overall Contract term) or a termination as the results of legislative appropriation may require.

8. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations expressly provided.

9. INSPECTION & AUDIT.

a. Books and Records. Each party agrees to keep and maintain under general accepted accounting principles full, true and complete records, agreements, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Each party agrees that the relevant books, records (written, electronic, computer related or otherwise), including but not limited to relevant accounting procedures and practices of the party, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location where such records may be found, with or without notice by the State Auditor, Employment Security, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, the County and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in this Contract. The retention period runs from the date of termination of this Contract. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

10. BREACH: REMEDIES. Failure of either party to perform any obligation of this Contract shall be deemed a breach. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including but

not limited to actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for attorneys.

11. LIMITED LIABILITY. The parties will not waive and intend to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Actual damages for any State breach shall never exceed the amount of funds which have been appropriated for payment under this Contract, but not yet paid, for the fiscal year budget in existence at the time of the breach.

12. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

13. INDEMNIFICATION. Neither party waives any right or defense to indemnification that may exist in law or equity.

14. INDEPENDENT PUBLIC AGENCIES. The parties are associated with each other only for the purposes and to the extent set forth in this Contract, and in respect to performance of services pursuant to this Contract, each party is and shall be a public agency separate and distinct from the other party and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

16. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

17. ASSIGNMENT. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Contract without the prior written consent of the other party.

18. OWNERSHIP OF PROPRIETARY INFORMATION. Unless otherwise provided by law any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by either party in performance of its obligations under this Contract shall be the joint property of both parties.

19. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

20. CONFIDENTIALITY. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Contract.

21. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract and that the parties are authorized by law to perform the services set forth in paragraph (6).

22. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Contract.

23. ENTIRE AGREEMENT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto, approved by the Office of the Attorney General.

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IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

WASHOE COUNTY

Marsha Berkbigler Date Title
Commission Chair, Washoe County

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF WELFARE AND SUPPORTIVE SERVICES

Steve H. Fisher Date Title
Administrator, DWSS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH CARE FINANCING AND POLICY

Leah Lamborn Date Title
Chief Fiscal Officer, DHCFP

Laurie Squartsoff Date Title
Administrator, DHCFP

Richard Whitley Date Title
Interim Director, DHHS

Signature – Nevada State Board of Examiners
APPROVED BY BOARD OF EXAMINERS
Approved as to form by: On _____
(Date)

Deputy Attorney General for Attorney General, State of Nevada On _____
(Date)

ATTACHMENT A

ATTACHMENT A
COUNTY MATCH
SCOPE OF WORK

A. PURPOSE AND OBJECTIVES:

The Department of Health and Human Services is the designated "single State agency" responsible for medical assistance provided in Nevada under authority of Title XIX of the Social Security Act. The Division of Welfare and Supportive Services (DWSS) and the Division of Health Care Financing and Policy (DHCFF) are responsible for implementing the State Plan under Title XIX, pursuant to Title 42, Chapter IV, Subchapter C of the Code of Federal Regulations, and Chapter 422 of Nevada Revised Statutes (NRS).

This Interlocal Agreement authorizes the Division of Welfare and Supportive Services and the Division of Health Care Financing and Policy to provide the administrative services necessary to implement the program of medical assistance to individuals who meet financial and medical eligibility criteria as defined below and the County to provide the non-federal share to DHCFF for medical, administrative and transactions costs incurred as a result of this medical assistance program.

B. THE DIVISION OF WELFARE AND SUPPORTIVE SERVICES (DWSS) AGREES:

1. To determine Medicaid eligibility based on criteria established and set forth in the Division's Title XIX State Plan and related policies and procedures. The criteria DWSS uses to determine eligibility includes a percentage of the Supplemental Security Income Federal Benefit Rate (SSI/FBR) prescribed annually by the Director. Eligible Medicaid recipients covered by this contract meet institutional level of care criteria and are provided with either institutional or community-based waiver services.
2. To determine county of residence in accordance with NRS 428.020. Disputes concerning county of residence will be referred by the disputing county to the Nevada Association of Counties (NACO), which, it is specifically agreed has authority to issue a final decision;
3. To provide a copy of newly approved applications, either by paper or an electronic PDF document, or provide electronic access to the necessary eligibility information the County may need.
4. To provide the Division of Welfare and Supportive Services' hearing process to those individuals or their guardians/authorized representatives who disagree with the eligibility determination.

C. THE DIVISION OF HEALTH CARE FINANCING AND POLICY (DHCFF) AGREES;

1. To process claims for medical services through the Medicaid fiscal agent;
2. To reimburse qualified providers for services covered in the Medicaid State Plan at the same rate as for all Medicaid patients;
3. To resolve provider inquiries and complaints regarding reimbursement;

4. To process patient liability for hospital and/or nursing home costs as determined by DWSS and to apply cost avoidance claims processing procedures when third party liability has been established;
5. To invoice the County retrospectively, on a monthly basis for the non federal share of Medicaid costs, based on actual expenditures as determined by the criteria established and set forth in the Division's Title XIX State Plan and related policies and procedures.
6. To send monthly itemized reports to the County that include the names of eligible county patients, dates of service, dates of payment, and total dollar amount of all payments made to Medicaid. The monthly reports will reflect all credits or debits as a result of claim adjustments by the fiscal agent and medical services credits including Medicaid Estate Recovery (MER) and Medicaid QIT Recoveries, which will be calculated and applied against the amount owed for the month.
7. To determine the amount owed by each county for the non-federal share of Medicaid costs, including medical claims payments, Medicare Part B premiums, Medicare Part D payments, and administrative costs. Administrative costs include, but are not limited to, the cost for staffing, processing claims, institutional audits, and mainframe computer use. Administrative costs will be re-determined each fiscal year based on negotiation with the fiscal agent and Division of Welfare and Supportive Services studies. The DHCFP will notify the County of the administrative cost per case at the beginning of each fiscal year and provide the County with the methodology used to determine the Administrative costs;

To determine the amount of cash reserve to be paid in advance by the County for the non federal share of Medicaid costs. This reserve will be determined by projecting the monthly average expenditures based on the previous fiscal years actual expenditures. The cash reserve will be applied to the June actual expenditures. If a shortfall in the June expenditures exists, DHCFP will bill the County to receive the additional funds prior to the end of the fiscal year. If a surplus exists, it will be applied to the following fiscal year, unless otherwise requested.

D. THE COUNTY AGREES:

1. To accept DWSS's criteria for Medicaid eligibility;
2. To allow eligibility disputes to be appealed through DWSS's hearing process by the applicant or authorized representative/guardian;
3. To refer disputes concerning county of residence to NACO whose decision will be final. The disputing county originally billed is responsible for payment of claims until the dispute is resolved at which time NACO will issue a written determination to notify the counties involved in the dispute and to notify DHCFP to make adjusting entries;
4. To accept and abide by DHCFP's determination of medically necessary services;
5. That eligible recipients, pursuant to this Agreement, will be entitled to receive the full range of medical services contained in the Nevada Medicaid Program State Plan;
6. No state appropriation is available to fund this program. From the time of billing, county funds must be paid within thirty (30) calendar days to be used as the non-federal share of costs;

7. Payments made by the County shall be derived from general county tax revenues or other general revenues of the County, per 42 C.F.R. 433.51 and in accordance with NRS Chapter 428.
8. To pay, up front a reserve balance to the DHCFP which will be determined by the DHCFP based on a monthly average of the previous state fiscal year. The County will pay an amount determined by DHCFP within thirty (30) working days of receipt of the notice.

E. ALL PARTIES AGREE:

1. It is specifically understood this Agreement is designed to expand Medicaid income eligibility criteria to include those individuals whose net countable income is specified above in B.1, including Medicaid receiving institutional and community-based (waiver) services. It is further specifically understood that the non-federal share of Medicaid expenditures for those qualifying individuals will be paid by the County;
2. It is specifically understood by all parties that Medicaid eligibility can only be determined to be effective no earlier than three (3) months before the month of application;
3. This Agreement will automatically terminate in the event federal funding is not available.
4. For those Counties with a population above 100,000, the billable amount for the "New Population" as determined by 2011 SB485 will be capped at the legislatively approved budget amount. The "Original Population" will be invoiced based on actual expenditures.
5. For all Counties with a population below 100,000, the billable amount for the "New Population" as determined by 2011 SB485 will be capped at the legislatively approved budget amount. The total billable amount for both populations will not exceed the eight (8) cent cap as established by NRS 428.285.